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No.

OFFICE OF THE CLERK

In The Supreme Court of the United States

October Term 1996

IN THE MATTER OF

BYRON C. WELLS, Petitioner

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

PETITION FOR WRIT OF CERTIORARI

For the Petitioner:
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88 pp

Suspended Attorney seeks reinstatement. Commisison recommends reinstatement, but same denied by Indiana Supreme Court. Second Petition results in second favorable recommendation for reinstatement. Denied again by Court which says complaints about court failing to follow its own rules shows improper attitude and overides proof of present fitness to practice law.

THE QUESTION PRESENTED IS:

May factual statements made during reinstatement proceedings to:

(1) a Hearing Officer, who is also presently a member of the agency which prosecuted the disciplined attorney,

(2) now an appointed hearing officer for reinstatement and conducting an adversarial hearing, wherein

(3) she, as the judge, found the recitation of facts designed to preserve error of the failure of the Indiana Supreme Court to follow its own rules, "offensive" and normal, legal and authorized efforts to simplify issues an abuse of the system,

(4) be considered (without a hearing or notice to the applicant) and ultimately determined to override all evidence of present fitness to practice law

(5) and thereby deny reinstatement?

PARTIES

PETITIONER

THE PETITIONER:	**BYRON C. WELLS**
HIS ATTORNEY:	**PRO SE**

RESPONDENT

THE RESPONDENT:	**THE SUPREME COURT OF INDIANA**
THE ATTORNEY:	**ATTORNEY GENERAL OF INDIANA**

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JURISDICTION:

(I) The Indiana Supreme Court denied your Petitioner's reinstatement to the Bar of the State of Indiana twice, with the last denial on December 18, 1996. The first rejection was September 27, 1994.

(ii) The Court Denied the Petition for Rehearing on February 24, 1997.

(iii) Review of a decision by the Indiana Supreme Court on the admission and discipline of attorney is only available through the United States Supreme Court, 28 U.S.C. § 1257.

CONSTITUTIONAL GROUNDS:

The Supreme Court of the United States, previously by case law, has determined that only the United States Supreme Court has authority to review the admission or discipline of an attorney imposed by the state's highest court of record, and those cases come within the provisions of Article III, Sec. 2, Cl. 1 of the Constitution of the United States.

AMENDMENT 1: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance.

AMENDMENT V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the

same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV: Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

INDIANA CONSTITUTION

Section 9: No law shall be passed restraining the free interchange of thought and opinion, or restricting the right to speak, write or print, freely, on any subject whatever; but for the abuse of that right, every person shall be responsible

Section 12: All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administer freely, and without purchase; completely, and without denial; speedily, and without delay.

Indiana Admission and Discipline Rule 23, Section 18: Petition for Reinstatement.

(a)...

Upon the filing of such a petition and filing fee under this subsection, the commission shall schedule a hearing. After such hearing, the commission shall determine wether the petitioner has met the requirements set forth in Section 4 of this rule and may recommend that the Supreme Court tender an order

continuing the suspension or reinstating the petitioner as a member of the bar of this Court on such terms and conditions as the Supreme Court may deem proper. The applicant for reinstatement may petition this Court for a review of the recommendation of the commission within thirty (30) days of entry thereof;

(b) For the purpose of conducting hearing on petitions for reinstatement, the commission may request the appointment of a hearing officer or hearing officers who may but shall not be required to be members of the commission. Such hearing officer shall have the same powers as the hearing officer provided for in Section 13, and shall hear such petition for reinstatement and make written findings of fact and recommendations to the commission. Following the receipt of the findings and recommendation of the hearing officer or officers, the commission shall make its recommendation to this court on such petition as set forth in subjection (a) above.

STATEMENT OF THE CASE

The Indiana Supreme Court has twice denied your petitioner, Byron C. Wells, reinstatement to the practice of law following his suspension for misconduct. The proceedings below have now been completed, and Wells has exhausted all available appeals. In the latest rejection, the Court ruled in its Order Denying Reinstatement, (Appendix P.34) that comments made by Wells about the Indiana Supreme Court procedures, such as failing to follow its own rules, and the like shows a lack of remorse and he should not be reinstated. It added that the comments overrode all evidence of rehabilitation. Wells asked the court for a rehearing, citing that he had never been afford an

opportunity to address the claims of a poor attitude, and the record discloses that he never claimed to be a victim. (Appendix P. 38).

Wells, who has admitted misconduct and presented proof of rehabilitation and his present fitness to practice law, has never been told previously why his reinstatement was rejected and was unaware the court would consider legal briefs and testimony in such a manner. The comments were truthful and non-derogatory and designed to explain the first rejection, (Appendix, p 16, 32A. 38) The disciplinary sentence of three years is now approached seven years. Following the first rejection Wells filed a petition for review questioning the ability of the Court to use unwritten rules to modify the reinstatement process, and asking for guidance since he is believed to be the fist person in the state's history to be rejected following unanimous recommendations of reinstatement by the agency appointed for the court to make that recommendation. The briefs were written by his attorney, and also several were pro se. Further, Wells complained that he was not given an opportunity to explain or provide any additional information following the reinstatement denial, and the court's order did not give any reasons for the action which would advise him what additional proof was required for reinstatement.

Wells contends that the testimony and pleadings are protected by free speech provisions and permissible argument by the attorney (including pro se pleadings filed by petitioner) to explain the status of his current case; a theory that the Indiana Supreme Court did not follow its own written rules governing reinstatement, and the process is fundamentally unfair, a denial of due process and unconstitutional under the First, Fifth and Fourteenth Amendment of the United States Constitution.

Wells said that the Commission unanimous

recommendation of reinstatement required the Court, by its own rule, to issue an appropriate order and that the reinstatement rule did not require a de novo hearing by the Court, submission of the findings of fact and conclusion of law, and any so called record to the Court for its own review.

Under the Indiana Reinstatement Rule 23, Section 18, the procedures is a hearing officer make a recommendation to the full Disciplinary Commission of the Indiana Supreme Court. (The commission is the initial investigator and prosecutor of the original action itself and the hearing officer was a member of the commission). The hearing is adversarial in nature, and he petition is opposed by the staff attorney for the commission. The rule actually says that the findings of fact are to be submitted to the commission w ho shall make a recommendation of reinstatement or continued suspension. ***If reinstatement is recommended, then the Indiana Supreme Court shall (emphasis added) issue an appropriate order.*** The court has just recently claimed to start making a de novo review (which are set by rule for pre-suspension hearing), and the commission is required to submit its findings and the record to the Court. Petitioners are not advised of what is actually sent to the court of its use.

The Court has never allowed Wells to present any evidence or argument on the issues it found in the second hearing which lead to his being denied reinstatement. The Indiana Supreme Court has never cited any statement, evidence, exhibits or provided any indication of what acts shown an attitude which was detrimental.

QUESTION: ***May a factual statement made during reinstatement proceedings to:***

(1) a Hearing Officer, who is also presently a member of the agency which prosecuted the disciplined attorney,

(2) now a hearing officer for reinstatement and conducting an adversarial hearing, wherein

(3) she, as the judge, found the recitation of facts designed to preserve error of the failure of the Indiana Supreme Court to follow its own rules, "offensive" and normal, legal and authorized efforts to simplify issues an abuse of the system,

(4) be considered (without a hearing or notice to the applicant) and ultimately determined to override all evidence of present fitness to practice law

(5) and thereby deny reinstatement?

The facts in this case are far more simple than the question indicates. First, the Petitioner Byron C. Wells was disciplined for admitted misconducdt. (Append. pg. 3). He is not seeking review of that discipline, ***In Re Wells***, 571 N.E. 2d 1290 (Ind. 1991), but the denial of reinstatement after twice being found to be in total compliance with the reinstatement rule, Indiana Admission and Discipline Rule 23, Section 18. (Append. pg. 1, 3, 33).

Wells proved his present fitness, by clear and convincing evidence, to the initial prosecutors of the charges against him, The Disciplinary Commission of the Indiana Supreme Court, (hereinafter Commission)which is the official Indiana agency to hear reinstatement petitions. The Commission and one of its members acts as a judge and jury for a recommedation. The Court has now, without modifying its rule, required findings, and believed other items, to be submitted, and they have adopted some type of de novo review allowing them to reject the recommendation required to be accepted by the rule. (Append. 47)

Guidance on such trials comes from ***In Re Murchsio***, 349 U.S 133 (1955):

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." ***Tumey v. Ohio***, 273 U.S. 510, 532. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of

justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice." ***Offutt v. United States***, 348 U.S. 11, 14. [349 U.S. 133, 137] It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very persons accused as a result of his investigations. Perhaps no State has ever forced a defendant to accept grand jurors as proper trial jurors to pass on charges growing out of their hearings.7 A single "judge-grand jury" is even more a part of the accusatory process than an ordinary lay grand juror. Having been a part of that process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused. While he would not likely have all the zeal of a prosecutor, it can certainly not be said that he would have none of that zeal.8 Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer.9 It is true that contempt committed in a trial courtroom can under some circumstances be punished summarily by the trial judge. See ***Cooke v. United States***, 267 U.S. 517.

In the past, the Indiana Supreme Court has followed the recommendaitons granting a full hearng when contested. They allowed findings to stand unless contrary information is shown. ***In Re Filipak***, 113 N.E.2d 283. (Ind.) In the instant case, the Indiana Supreme Court did not indicate what pleadings or acts it found to be offensive to support its decision to deny reinstatement, nor what actual evidence was used for such a determination. In addition, the Indiana Supreme Court only quoted part of the Hearing Officer's remarks, where she said that

Wells' comments may have been caused by his anxiousness to resume practice (after six years of a three year suspension), or overzealousness on his part...and those efforts were "somewhat offensive" to her. (Append Pp. 7-8).

It is a matter of black letter law that a trier of facts, even as an administrative hearing officer, be impartial, and the appearance of impropriety be avoided. The regulatory scheme in Indiana suffers from its own internal conflict.

The new court review does not give any petitioner a right to know what record is before the court, what items the court is considering, nor allow for a petitioner to even know of any questions the court has about any evidence or proof. There is no "show cause" provision to allow the applicant for reinstatement to plead or explain anything.

Only one aggrieved by the Commission recommendation has any right to file fo review. (See Ind. Admis. & Disc. Rule 23, Section 18) There is no forum for appealing favorable recommendations such as we have in this case. Wells has never had a forum to plead his case after the rejection, and all efforts to do so were rejected by the court without comment.

The court said its latest reinstatement rejection was because Wells, by listing court actions denying the first petition in violation of the rule, showed a lack of remorse. There

has never been a complaint from officials saying the remarks were not truthful, had been misstated or were an attempt to mislead them in any manner. Just that the Court disagreed with Wells' theory the rule controlled the process.

There is no dispute that the court should, and rightly so, be treated with respect. However, judges are not allowed to insulate themselves from the "slings and arrows" they insist other public officials face. See ***New York Times Co. V. Sullivan***, 376 U.S. 254, 11 L.E. 2d 686, 84 S.C. 710. (1964). False charges, and other acts which excoriate judges may be basis for discipline, but never before has "truthful and non-derogatory comments about facts" contained in legal proceedings about rules been grounds for punishment despite attempts to hide behind an alleged view of compliance with required showing of remorse for admittedly bad acts.

In re Sawyer, 360 U.S. 622 , 3 L.E. 2d 1473, 790 S.C. 1376, (1959), and numerous cases since have held that lawyers and pro se clents, may comment about courts and their actions:

> We start with the proposition that lawyers are free to criticize the state of the law. ...But all are free to express their views on these matters, and no one would say that this sort of criticism constituted an improper attack on the judges who enforced such rules and who presided at the trials. This is so,

> even though the existence of questionable rules of law might be said in a sense to produce unfair trials. Such criticism simply cannot be equated with an attack on the motivation or the integrity or the competence of the judges. And surely permissible criticism may as well be made to a lay audience as to a professional...Bentham's strictures on the state of the common law and Dickens' novels come to mind. And needless to say, a lawyer may criticize the law-enforcement agencies of the Government, and the prosecution, even to the extent of suggesting wrongdoing on their part, without by that token impugning the judiciary. Simply to charge, for example, the prosecution with the knowing use of perjured testimony in a case is [360 U.S. 622, 633] not to imply in the slightest any complicity by the judge in such actions. To charge that the Government makes overmuch use of the conspiracy form of criminal prosecution, and this to bolster weak cases, is not to suggest any unseemly complicity by the judiciary in the practice.

Likewise ***In Rideau v. Louisiana***, 373 U.S. 723 (1963), JUSTICE CLARK, with whom MR. JUSTICE HARLAN joined, dissenting says:

> The right to a trial before a fair and impartial tribunal "is a basic requirement of due process," ***In re Murchison,*** 349 U.S. 133, 136 (1955), and must be safeguarded with vigilance. As we recognized in ***Irvin***, however, it is an impossible standard to require that tribunal to be a laboratory, completely

> sterilized and freed from any external factors. The determination of impartiality, in which demeanor plays such an important part, is particularly within the province of the trial judge...

The procedures used here totally ignores this Court's repeated recognition that our system of law has always endeavored to prevent even the probability of unfairness as ***Murchison***, supra, and ***Sheppard v. Maxwell***, 384 U.S. 333, 352, 1516 (1966); ***Estes v. Texas***, 381 U.S. 532, 544, 1633 (1965) and ***Crawford v. Georgia***, 489 U..S. 1040.

In fact, the court itself caused the need for an explanation of the first reinstatement petition when it refused to say why it was rejected, or how Wells chould comply. The Court, even after requests, would only say that Wells did not convince the Court of his compliance with the rule. (Append. P. 6, 28-30).

The applicant was left to speculate why he was turned down, and naturally, in the second reinstatement hearing, Wells explained what happened during the first petition. He said that he did not have a forum for review, and that the court's action was a deprivation of due process and fundamental fairness, as well as violative of the rules. The same type arguments were previously made by his attorney and there were no complaints by anyone. In his

last pro se motion, (Append. pp. 38-50), he showed testimony the discipline probably saved his life. Due process of law as envisioned by both the United States Constitution, through the 14th Amendment, and the Indiana Constitution, Article One, Section 12, applies to administrative bodies as well as the Courts. ***Ladd v. Review Bd. of Ind. Employ. Sec. Div.,*** 276 N.E. 2d 871, 150 Ind. App . 632, (1971). Also, it is always the duty of trial court to see that fundamental right of due process are not improperly denied, ***Kaiser Aluminum and Chemical Sales, Inc., v. Dicberhoff***, 199 N.E. 2d 719, 136 Ind. App. 258. In the absence of statue or prior interpretations, due process dictates essential fairness rather than detailed procedures are employed. ***Jenkins v. Harvey***, 367 N.E. 2d 1, 174 Ind. App. 677, (1977). The Indiana Supreme Court is, in fact, a trial court in disciplinary matters. ***In Re Murray***, 362 N.E.2d 128, 166 Ind. 221, appeal dismissed 434 U.S. 1029, 54 L. Ed. 777, 98 S. Ct. 758.

Efforts to "streamline" the issues and provide some sort of judicial economy by acceleration of time to ressolve the petition resulted in a complaint by the Hearing Officer that Wells was critical of the process, abusing the system and that he should have known better because he supposedly was familiar with the disciplinary process. (Append. pps. 12 to

14). This set the stage for the court's determination that all pleadings were a sign of an improper attitude. This, in fact, then becomes a new element which must be met to be reinsatated, although one has never been advised of its requirement.

In ***Zauder v. Office of Disciplinary Counsel***, 471 U.S. 616, 85 L.E. 2d 652, 105 SC 2265, (1985), in a concurring opinion, it was said:

> Zauder, of course, might not ultimately be able to disprove the Board's theory. 'A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense - a right to his day in court are basic in our system of jurisprudence.' ***In Re Oliver***, 333 U.S. 257, 273 (1948). Under the Due Process Clause, 'Reasonable notice" must include disclosure of 'the specific issues the party must meet," ***In Re Gault***, 387 U.S. 1, 33-34, (1967) and appraisal of 'the factual material on which the agency relies for decision so that he may rebut it," ***Bowman Transportation Inc. V. Arkansas-Best Freight System, Inc.***, 419 U.S. 281, 288 n.4, (1974.) These guarantees apply fully to attorney disciplinary proceedings because obviously "lawyers also enjoy first-class citizenship," ***Spevack v. Klein***, 385 U.S. 511, 516 (1967). Where there is an 'absence of fair notice as to **the reach of the grievance procedure and the precise nature of the charges,' so that the attorney is not given a meaningful opportunity to present evidence in his**

> **defense, the proceedings violate due process.** ***In re Ruffalo***, 390 U.S. at 552. (Emphasis added)...
> ...All that Zauder could do was to argue that the Board's report was grounded on a theory that he had never been notified of and that he never had an opportunity to challenge with evidence of his own, and to request that proper procedures be followed (471 U.S. 626, 673)...
> ...The ***court completely ignored those objections***. To hold that this sort of procedure constituted a meaningful 'chance to be heard in a trial of the issues,' ***Cole v. Arkansas***, 333 U.S. 196, 201, is to **make a mockery of the due process of law that is guaranteed every citizen accused of wrongdoing**. (Emphasis added.)

As stated, the Hearing Officer is currently a member of the Commission that investigated and prosecuted the original charges. The rule in Indiana is that the Commission hears reinstatement petitions and makes recommendations, and the Court SHALL issue an appropriate order (emphasis added). In practice, the court has taken over all but the hearing duties without changing its own rules.

The Hearing Officer then is reacting the complaints of a lack of fairness by her own agency, which is presented to the Commission, as well as the Supreme Court where she was serving as a hearing officer in the reinstatement process. (As shown in Append.

Pps. 21 to 25). Since these comments are considered free speech, and protected by the First Amendment, Indiana has ruled that it may not take judicial notice of factual determinations, but they must be presented and fully developed in a suitable adversary atmosphere. ***Board of Com'rs of Howard County v. Kokomo City Plan Commission***, 330 N.E. 2d 91, 263 Ind. 282, (1975).

Because of the failure of the hearing officer to even show what was in the record, or indicate what her complaint was based upon, Petitioner Wells is unable to show this Court with clarity and confidence which pleading or acts were involved. The cryptic statement by the Court was "both the petitioner's pleadings and presentation at hearing" (which could include both hearings) gave them concern about his conduct. Wells has no way to determine what legal pleading the Court considered. The Hearing Officer also objected to Wells' efforts to accelerate the hearing although his actions are specifically authorized by the disciplinary rule. **Nevertheless, despite any "concern" the hearing officer expressed she did recommend reinstatement**, as did the Commission, without dissent.

Absent the comments by the Hearing Officer, there is nothing in the record for the court to deny reinstatement. (Nor was there in the fist hearing). The critical comments

should only have been dicta, and not evidence of a wrongdoing which would prevent reinstatement. **Even the hearing's officer's comments do not indicate an attitude detrimental to the practice of law, nor that the same bad acts would happen again.**

The main contention by Wells is that the factual statements about the disciplinary process concerned the way the Court failed to follow its written rule; a failure of the Court to provide procedures for a hearing when favorable reinstatement recommendations are not followed; claims by the Court that it considered transcripts of testimony which had never transcribed (even as of this filing) but never admitted by the court; and other procedural problems. The complaints about the disciplinary process were factual statements of the events during the hearings and its effect on your petitioner. There were no derogatory comments made about the individual judges, nor their decision or of the discipline imposed. In fact, Wells even stated that the discipline made him stop and reconsider what he was doing, and "probably saved my life." (Append. pps. 38-50).

Because this was a second hearing Wells does not know if any pleadings from the first hearing were included in the court's so called record. Although he requested, in a motion and during a pre-trial, that he be given a listing

of the items in the record, it was not provided. Because of the first hearing, he filed a copy of all exhibits introduced in the hearing as a matter of safety. (Append. 34). Although supposedly submitted by the hearing officer, if there is a problem with the "record" it is Wells who, by court dictates, suffers. ***In Re Sekerez***, 458 N.E. 2d 229, at 223. Wells has never been advised what was the "record" considered by the court, nor has he had an opportunity to respond to specific issues such as "attitude about the disciplinary process" or "claims to be a victim of the process" at anytime. ***In Re Ruffalo***, 390 U.S. 544 (1968).

In Re Ruffalo, 390 U.S. 544, (1968), held that the court in a disciplinary matter could not use the testimony of the attorney to discipline him unless the attorney was notified that the conduct would be considered misconduct. That was held to be a lack of procedural due process. Pleadings, with due difference to the Court and in a non-derogatory manner citing specific cases and actual facts should not be, nor ever attain, the status of misconduct, or failure to show remorse. That is very nature of what an advocate should do. If he failed to do so, the Court could say such failure waived his right to object to the Court's actions. Therein rests the crux of the problem facing Wells. He chose to act as an

attorney, pro se, and for that action he is considered unfit because he dared to say the court was wrong.

In normal appeal processes, a party has a right to view the record, and in fact, most are prepared by a party. Here, the Indiana Supreme Court is in the position of being a trial court, and makes it ruling without a record being prepared or even seen by the applicant for reinstatement. He is unaware if the Commission staff attorney has access, nor if the staff attorney is allowed to participate in the commission deliberation as to its recommendations.

Traditional legal arguments, briefs and other attorney-prepared information traditionally are not considered evidence but if done so, the person submitting the same is given an opportunity to respond to any questions. In an adversarial process one side attempts to persuade the trier of facts. In this case, it appears the Indiana Supreme Court used what was termed procedural defects as evidence to deny the reinstatement.

Is speech petitioning a court for redress of grievances' free speech or a tool to authorize punishment?

> In the usual case involving a restraint on speech, a showing that the challenged rule served unconstitutionally to suppress [433 U.S. 350, 380] speech would end our

analysis. In the First Amendment context, the Court has permitted attacks on overly broad statutes without requiring that the person making the attack demonstrate that in fact his specific conduct was protected. See, e. g., ***Bigelow v. Virginia***, 421 U.S., at 815-816; Gooding v. Wilson, 405 U.S. 518, 521-522 (1972); ***Dombrowski v. Pfister***, 380 U.S. 479, 486 (1965). Having shown that the disciplinary rule interferes with protected speech, appellants ordinarily could expect to benefit regardless of the nature of their acts. The First Amendment over breadth doctrine, however, represents a departure from the tradition rule that a person may not challenge a statute on the ground that it might be applied unconstitutionally in circumstances other than those before the court. See, e. g., ***Broadrick v. Oklahoma***, 413 U.S. 601, 610 (1973); ***United States v. Raines***, 362 U.S. 17, 21 (1960); ***Ashwander v. TVA***, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). The reason for the special rule in First Amendment cases is apparent: An over broad statute might serve to chill protected speech. First Amendment interests are fragile interests, and a person who contemplates protected activity might be discouraged by the in terrorem effect of the statute. See ***NAACP v. Button***, 371 U.S. 415, 433 (1963). Indeed, such a person might choose not to speak because of uncertainty whether his claim of privilege would prevail if challenged. The use of over breadth analysis reflects the conclusion that the possible harm to society from allowing unprotected speech to go unpunished is outweighed by the possibility that protected speech will be muted.

BATES v. STATE BAR OF ARIZONA, 433 U.S. 350, 53 L.E. 2d 810, 97 SC 2691,(1977).

What effect would be felt if this type of procedure gains a foothold in the legal profession, and its adversarial role where attorneys, and pro se clients, both try to persuade their understanding of the written rule on a court? No court should refuse to consider such arguments, oral or written, but then turn around and punishes one for saying in a respectful manner that the proponent disagrees with the Court. Are attorneys who befall a disciplinary action required to stand mute, and not say anything when written rules are not followed simply because it is the state supreme court. Or, are they required to make that issue know, under the normal requirements of a court, or the issues are waived. That question is answered by this Court's own Rule 15, which states if the respondents do not correct mistaken claims, they may waive the issue.

If Wells had not made the objections, by his attorney and pro se, he falls prey to waiver. If he does object, then he lacks in remorse, and imposes doubt on the integrity of his non-disputed evidence. If he follows the rules to simplify issues, and complains that he is believed to be the first person in Indiana history rejected following a unanimous reinstatement recommendation offends the hearing officer which shows a disrespect for the court.

Although it has been held, and there is no dispute here, courts may curtail disparaging remarks about judges and the judiciary. But when it involves the imposition of a penalty after the exercise of free, non-derogatory speech in a legal forum to protect the record for appeal, all protected by the First, Fifth and Fourteenth Amendments to the United States Constitution, there are some protections. An invasion of those privileges are not taken lightly. In ***Spevack v. Klein***, 385 U.S. 511, 17 L.E. 2d 574, 87 SC 625, (1967), this court explained that a penalty includes assertions of sanctions of any kind, for exercising 1st Amendment rights, and severe limits on penalties for 5th Amendment protections..

Likewise, ***NCAAP v. Button***, 371 U.S. 415, at 4378, 9 L.E. 2d 405, 83 S.C. 328, (1963, held that "broad prophylactic rules in the area of free expression are suspect, and precision of regulation must be the touchstone in the area so closely touching our most precious freedom. Here, we are not even given a rule to compare our conduct, but only an interpretation based upon an opinion that someone was offended.

In the instant case, Wells is being punished for claiming that the court did not follow its own rules, and "suggestions" that the punishment imposed was too harsh. As to the claim that the rules were not followed, Wells would merely point to the rule. This includes the rejection of his application because of the complaints he made

which amounts to a lack of due process, procedural due process and fundamental fairness. The court, by its written rules, must issue an appropriate order upon the recommendation made by its own commission. They did not, and instead reweighed the evidence without notice to Wells or any opportunity to address what the Court felt were inappropriate comments which outstripped Wells' exhaustive and overwhelming evidence that he not only admitted his wrongdoing, and has rehabilitated himself, including the expert testimony by the Indiana Supreme Court's self-picked expert witness.

As to the issue of "suggestion" that the punishment was excessive, Wells would claim that he repeatedly stated in the hearing and otherwise that he reviewed the disciplinary cases handed down by the Indiana Supreme Court (even to filing a report with its disciplinary commission) to show his understanding of the rules, and commented that it would be improper to compare his case to others who have run afoul of the rules.

Totally ignored by the Indiana Supreme Court were remarks made by Wells that the discipline had caused him to stop such bad behavior and "probably saved his life," and a turnaround of his perceptions of the standards to a point where he would emphatically state that merely asking for such sexual participation would be misconduct, or even allow a client to approach him.

As often said, our country is based on a

rule of law, not of men. The disciplinary rules should reflect a clear articulation of the State's policy with regard to professional behavior. Unwritten rules and policies are sometimes more evil than crushed constitutional rights since they allow interpretations and personalities to replace reason and deliberate adherence to known standards. ***Zauder, supra***, 471 U.S. 626, noted:

> A regulation that 'either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.' ***Connally v. General Construction Co.*** 269 U.S. 385, 391` (1926). The Fourteenth Amendment's Due Process Clause 'insist(s) that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.' ***Gayned v. City of Rockford***, 408 U.S. 104, 109-109 (1972). This requirement 'applies with particular force in review of laws dealing with speech,'471 U.S. 626, 666) ***Hynes v. Mayor of Oradell***, 425 U.S. 671-0, 620 (1976); 'a man may be the less required to act at his peril here, because the free dissemination of ideas may be the loser,' ***Smith v. California***, 361 U.S. 147, 151, (1959).....
>
> **"The mere opportunity unsuccessfully to bring procedural violations to the**

> **attention of an appellate-type forum obviously does not constitute the meaningful 'chance to be heard' that is guaranteed by the Due Process Clause.** (Emphasis added) ***Cole v. Arkansas***, 333 U.S. 196, 201-202, (1948)
>
> (N.10 ADDS): In addition to ensuring fair notice, vagueness doctrine also guards against 'harsh and discriminatory enforcement...against particular groups deemed to merit [official] displeasure.' ***Papachristour v. City of Jacksonville***, 405 U.S. 156, 170 (1972) citation omitted; see also ***Kolender v. Lawson***, 461 U.S. 352, 358 (1983). Some commentators have suggested that vague disciplinary rules have been used as a tool for singling out unorthodox and unpopular attorneys for sanction. See, e.g. Comment, Controlling Lawyers by Bar Associations and Courts, 5 Harv. Civ. Right-Civ. Lib. L. Rev. 301, 312-314(1970)

Goldfarb V. Virginia State Bar, 421 U.S. 773, 44 L.E. 2D 72, 95 S.C. 2007,(1975), is a prime example of what may happen when the state court of last resort allows <u>non-written</u> rules to be enforced. There, local bar associations adopted minimum fee schedules, enforced by the state bar, without the court's authority.

The actions against one's suggested opinion, or thought process, has now been interpreted as a lack of remorse for previous actions, long since recognized and corrective action taken. That is a most unusual violation of a person's civil

rights. Your petitioner, Wells is not able to find a case where mere disagreement, presented in a non-derogatory manner without any inferences of disrespect or without contempt having been used to deny one of a property right. (Indiana has determined that one has a property right in a law license.) Such action is tantamount to a total disregard for rights the Indiana Supreme Court has taken an oath to uphold for all its citizens. Will that statement now lead to contempt charges, jail time or a fine? It is obvious it would prevent reinstatement of a license to practice law.

In ***NAACP v. Button***, 371 U.S.. 415, 9 L.E. 2D 504, 83 S.C. 328, (1963), this Court said:

> ....The decisions of this Court have consistently held that only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms. Thus, it is no answer to the constitutional claims asserted by petitioner to say, as the Virginia Supreme Court of Appeals has said, that the (371 U.S. 439), purpose of these regulations was merely to insure high professional standards and not to curtail free expression. For a State may not, under the guide of prohibiting professional misconduct, ignore constitutional rights. See ***Schware v. Board of Bar Examiners***, 353 U.S. 232, ***Konigsberg v. State Bar***, 353 U.S. 252, Cf. ***In Re Sawyer***, 360 U.S.

622. ***Button, supra***, at 439.

Likewise, ***Edwards v. South Carolina***, 371 U.S. 229, (1963), discusses why curbs on free speech are undesirable.

All of Wells' actions were within the normal framework of a legal hearing, not a public statement claiming judges are unfair, such as those considered and rejected by ***In Re Sawyer***, 360 U.S. 622, 3 L.E. 2d 1473, 79 S .C. 1376, (1959), where an attorney was charged with impugning the impartiality and fairness of a judge during a trial was suspended for a year with the discipline reversed.

The Indiana Supreme Court specifically noted that the trier of fact found that Wells had presented clear and convincing evidence of compliance with the reinstatement rule, but who then added her comments that Wells' trial tactics caused her some concern, and she was offended. The hearing officer made the recommendation despite her "concern" and "being offended." A fair reading of the comments, Appendix Pg. 8, shows that the first concern by the hearing officer was efforts by Wells to streamline the second reinstatement hearing process.

Offending action by Wells included asking for a record to be disclosed; attempts to restrict the hearing to those issues involved rather than cover previously covered issues; asking for instruction from the Hearing Officer how to proceed since that was a second hearing; request

for discovery; and the Statement of the Cases and Issues which was attached to her findings submitted to the Court. Such routine motions are handled easily by most judges, and how they became a bone of contention to show an abuse of the hearing process.

The disciplinary rule, like most civil actions, allows settling issues, procedures, and the like. But the court did not address this part of the report, only Wells claimed he was a "victim" as the reason for denial of reinstatement. The court's rejection was not clear and Wells, without further help from the hearing officer or the court, had to determine what act or pleading caused an implication he was a victim of the process. He did not believe he had ever claimed to be a victim. The Indiana Supreme Court had to insert limiting information to the findings. (Appendix Pg.36, such as the petitioner's "attitude regarding the ***(REINSTATEMENT)*** proceedings in general caused some concern and she found his "attempts to present himself as a victim ***(OF THE DISCIPLINARY PROCESS)*** somewhat offensive. (Findings, Second Hearing, P. 5. Emphasis added.)

The Indiana Supreme Court failed to fully quote the hearing officer who also said that Wells' "familiarity with the disciplinary process is far greater than the average attorney. Despite this familiarity, Petitioner at times was somewhat critical of the process, repeatedly attempting to streamline the process for his own benefit.

Whether this was a result of his anxiousness to resume his practice as an attorney or just overzealousness on his part, this Hearing officer found his attempts to present himself as a victim, somewhat offensive." Limiting the issues, and discussing prior court action, were factual statements to show what happened at the first hearing, and the subsequent actions on his part and why we were in hearing.

The simple facts were: Wells completed his suspension and filed for reinstatement. He may not start the process or take the ethics exam until after the time is completed. It takes about a year for the process. The commission, by the reinstatement rule, recommended reinstatement without dissent. The Court refused to follow its own rule and instead rejected the petition, merely saying the record did not convince them Wells understood the standards, (First Denial, Appendix P.3). Efforts to seek explanation or instrucitons were denied. Then it was learned the Indiana Supreme Court claimed it had all the transcripts when four were not even typed; the record submitted to the court was not disclosed, and he did not know what exhibits were included in an alleged record.

In toto, judicial action, even in this individual case, may have been based on inadmissible considerations which would violate the standards required of due process. As found by ***Schware vs Board of Law Examiners,*** 353 U.S. 232, 11

L.E. 2d 796, 77 S.C. 752, (1957), held:

> Refusal to allow a man to qualify himself for the profession on an arbitrary standard or on a consideration that offends the dictates of reason offend the Due Process Clause. Such is the case here.

He now is seeking the aid of this Court as promised to all attorneys who prepare a good battle for their client, even if themselves. This Court has stated:

> But that there may be no misunderstanding, we make clear that this Court, if its aid be needed, will unhesitatingly protect counsel in fearless, vigorous and effective performance of every duty pertaining to the office of the advocate on behalf of any person whatsoever. But it will not equate contempt with courage or insults with independence. It will also protect the processes of orderly trial, which is the supreme object of the lawyer's calling. ***Sacher v. United States***, 343 U.S. 1, 14, 96 L. E. 2d 17, 72 S.0C. 415, (1952)

Wells as well as all other attorneys who are seeking reinstatement, or their counsel, are in need of such help now in Indiana.

Admittedly, dicta, this Court has indicated that proceedings were at least defective, or subject to inquiry, when the bar association prosecuting a disciplinary matter was headed by

counsel for an adverse party headed the association. ***In Re Ruffalo***, 390 U. S. 544 at 545, 20 L.E. 2d 117, 88 S.C. 1222, (1968). The court did not pursue that line of inquiry since there were other reasons for the reversal of the disbarment of an attorney.

At first blush, one would say that the Commission, and its Hearing Officer, passed constitutional muster since the unanimous vote was for reinstatement. But, the Hearing Officer destroyed the concept of a favorable recommendation. It was that report the court cited, for its denial.

First, the commission is the investigatory agency for misconduct complaints against attorneys. They may seek the assistance of the police or other law enforcement agency. In the initial discipline, they make the decision to prosecute or not. They are the ones who gather, and apply the evidence of the case. They have all the files, facts, statements, or other information about the imposition of discipline in the first place. They have an interest in protecting the agency, and enforcing its policies by the very nature of the agency itself.

Traditional norms of Judicial Conduct, even those in Indiana, require recusal when their impartiality could be questioned, has a personal bias or personal knowledge of disputed facts; has served as a lawyer in the matter or with

whom he practices has served as a lawyer.

The specific rule does not reserve a right of review by the Indiana Supreme Court, but requires the disciplinary commission to make a recommendation of reinstatement or continued suspension to the Supreme Court which ***shall issue an appropriate order under terms it deems appropriate*** (emphasis added).

The Indiana Supreme Court failed in its written rule to reserve any provision for review of the recommendation by the disciplinary commission but delegated to the disciplinary commission the requirement to make a recommendaiton which they would honor with an appropriate order.

In ***Hoover v. Ronwin***, 446 U.S. 558, 80 L.E. 2d 590, 104 S.C. 1989, (1984), this Court found that the Arizona rules require review of grading questions if an applicant is aggrieved--to include hearings and such directions as need. (Rule 28,c XII F2,). In that case, the Petitioner made no claim that the Arizona Court failed to comply with its rules. That is not the case involving Wells. ***In Ronwin***, at 578, this court noted that the Arizona rules carefully retained the right of that Supreme Court to make a final decision. This is not like the case of the Virginia Bar in Goldfarb (***Goldfarb V. Virginia State Bar***, 421 U.S. 773 (1975) where minimum fees were required by bar associations but not a part of the state supreme

court rules.

Indiana did not retain such power under its written rules which have been in effect for years. It did not even retain a provision for a review of the evidence, much less grant a de novo review where it could reweigh the evidence except when one is aggrieved.

The proceedings, although designed for quick and efficient resolution of disciplinary disputes, are in actual practice been transformed to a full adversarial proceeding with the original prosecuting agency's (the commission) staff attorney representing the commission and opposing the request for reinstatement, before a member of the same commission serving as hearing officer and judge in the same action before the same Supreme Court. There is no independent magistrate involved.

Reasons to Grant the Writ of Certiorari

This Court has repeatedly held that even the appearance of impropriety be avoided by the judiciary, and that it is highly suspect for a prosecutor to later be a judge on the same case. This is the case here. In addition, legal arguments by counsel and the suspended attorney seeking reinstatement have been used to deny returning to his chosen profession under the guise of showing a poor attitude. Rights for Free Speech are discarded, as well as the role of an advocate in a hearing where he faces two opponents---the hearing officer and the staff attorney, both of whom are agents of the very prosecutor who filed and prosecuted the original charges of misconduct. Also, an admitted mere suggestion that the initial punishment may have been viewed as too severe is being used to bolster a denial of due process; fundamental fairness and following the Indiana Supreme Court's own rules---despite proving twice by clear and convincing evidence of present fitness to practice law.

This writ must be granted to require the Indiana Supreme Court to comply with the United States Supreme Court efforts to

uphold a view of impartiality, decency and equal protection in the relationship with members of the bar.

Starchamber activities have been outlawed. But, Indiana has departed so far from the accepted and usual course of judicial proceedings that this Court's supervisory powers should be used to provide fairness, including fundamental fairness, and due process of law in a matter that appears to have degraded to mere ignoring evidence as well as refusing to comply with the Court's rules. The Court has shown that it will not comply with its own rules, nor allow anyone to question its authority to do as it pleases in anyway it sees fit.

Complaints about the failure of the court to follow its own rules has become insulation for the direct effort to refuse to reinstate an attorney who has satisfied all of the requirements---by subterfuge. This is to void any adversarial role in the process, even those complaints made respectfully, without derogatory remarks or personal attacks.

Inherent conflicts arise when a prosecutor becomes the judge for reinstatement. It is enhanced when the prosector/judge determines that the reinstatement should be granted, but allows personal comments about legal efforts to follow the rules to streamline the case to lead the way to dash any hopes of approval by the Court.

No.

In The
Supreme Court of the United States

October Term 1996

IN THE MATTER OF

BYRON C. WELLS, Petitioner

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

APPENDIX

For the Petitioner:
BYRON C. WELLS, Pro Se
170 North Hollywood Avenue, D3
Memphis, Tennessee 38104
(901) 324-5382

IN THE SUPREME COURT
OF THE
STATE OF INDIANA

IN THE MATTER OF THE)
REINSTATEMENT PETITION) CAUSE 7350-8904-DI-312
OF BYRON C. WELLS)

RECOMMENDATION OF THE INDIANA SUPREME COURT DISCIPLINARY COMMISSION UPON THE PETITION FOR REINSTATEMENT OF BYRON C. WELLS

Pursuant to A.D. Rule 23, Section 18(b), the Indiana Supreme Court Disciplinary Commission has considered the attached Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation filed by its Hearing Officer, Julia Blackwell Gelinas, the Commission now accepts those Findings of Fact, Conclusions of Law and Recommendation, and incorporates them by reference into this Recommendation.

Based upon said findings, conclusions and recommendation, the Indiana Supreme Court Disciplinary Commission now recommends to the Indiana Supreme Court that the Petitioner, Byron C. Wells, be reinstated to the practice of law.

So recommended this the day of August, 6,1997.

(SIGNATURES)

William F. Lawler, Jr. Barbara Coyle Williams
Kerry I. Thompson Marce Gonzalez Jr.
Grant W. Hawkins Thomas J. Brunner, Jr.
Janet Biddle David L. Hale

IN THE SUPREME COURT
OF THE
STATE OF INDIANA

IN THE MATTER OF)
THE REINSTATEMENT OF)CAUSE 3500-8904-DI- 312
BYRON C. WELLS)

FINDINGS OF FACT. CONCLUSIONS OF LAW AND RECOMMENDATIONS UPON THE PETITION FOR REINSTATEMENT FILED BY BYRON C. WELLS

This matter came before the undersigned Hearing Officer on the Petition For Reinstatement filed in the above captioned cause by Petitioner, Byron C. Wells.

The Hearing Officer, having heard, considered and reviewed the evidence in the above captioned cause and being duly advised in the premises, makes the following Findings of Fact, Conclusions of Law and Recommendations to the Disciplinary Commission pursuant to Rule 23, Section 18(h), Indiana Rules of Admission and Discipline;

1. The Petitioner, Byron C. Wells, was admitted to the practice of law on October 11, 1977.

2. On December 12,1990, the Indiana Supreme Court suspended the Petitioner from the practice of law in Indiana pending further order of the Court.

3. On June 13, 1991, the Indiana Supreme

Court issued an opinion and order that the Petitioner's suspension would continue to December 12, 1993. (***Matter of Wells***, 572 N.E 2d 1290 (1991).

4. The Petitioner was found to have violated Ind. Professional Conduct Rules 8.4(b) and (d) by committing criminal acts which reflected adversely on his honesty, trustworthiness and fitness as a lawyer, and by conduct that was prejudicial to the administration of justice. The Indiana Supreme Court found that the Petitioner had inappropriately touched young males who were his clients, in an effort to initiate sexual activity with them. The acts which occurred in 1986 and 1987, were not inadvertent and were found to be intentional conduct on the part of the Petitioner. The Court found a nexus between Petitioner's criminal conduct and his fitness as an attorney. Although there was no evidence that Petitioner exerted any force upon the victims, the Court found that "the orderly disposition of judicial matters is greatly harmed when an attorney entwines a sordid personal agenda with his representation of a client." 572 N.E 2d. at 1292-93.

5. On February 2, 1994, the Petitioner filed his first Verified Petition for reinstatement to the Bar with the Clerk of the Indiana Supreme Court (First Petition).

6. Pursuant to Ind. Admission and Discipline Rule 23, § 18(b), Sherrill William Colvin was appointed hearing Officer to hear the Petitioner's first Verified Petition for Reinstatement, That Petition was heard on July 8, and July 15, 1994.

7. By Recommendation dated August 12,1994, and filed with the Court on August 15, 1994, the Indiana Supreme Court Disciplinary Commission accepted the Hearing Officer's Findings of Fact and Conclusions of Law and Recommendation that the Petitioner be readmitted to the practice of law in Indiana.

8. By Order dated September 29, 1994, the Indiana Supreme Court denied the Petitioner's petition for reinstatement to the practice of law, finding that:

> "[T]he record before us fails to convince us that Petitioner has a proper understanding of' and attitude towards the standards that are imposed upon members of the bar and that he will conduct himself in conforms with such standards. We conclude that he has failed to meet the requirements set forth in Admis. Disc. R. 23, Section 4(b), and that, accordingly, he should not be reinstated to the practice of law,"

9. On February 20, 1996, the Petitioner filed his Second Verified Petition for Reinstatement. (Second Petition).

10. A hearing was held on the Second Petition on July 9, 1996 Petitioner appeared in person and by counsel, Joseph Stork Smith. The Disciplinary Commission appeared by its staff attorney, Dennis McKinney.

11. At the hearing Petitioner and The Disciplinary Commission stipulated that the entire record from the hearing on the first

Petition be made part of the evidentiary record for the consideration of this Petition.

12. The Petitioner has paid the costs associated with his resignation and the first Petition.

13. The Petitioner has complied fully with the terms of the Court's Order of Suspension. The Petitioner has made substantial compliance with the terms and provisions of Admission and Discipline Rule 23, Section 26 (b) with regard to the notification to his clients of his suspension and the efforts made to secure substitute counsel for them.

14. The Petitioner has not practiced law in this state, or any other forum, and has not attempted to do so since prior to the December 12, 1990 Order of Suspension.

15. Petitioner's original terms of suspension has elapsed and he is now seeking reinstatement. A petition for reinstatement may he granted if the petitioner establishes by clear and convincing evidence those elements set forth in Admission and Discipline Rule 23, Section 4(b). In reviewing the elements contained in Section 4(b), the Hearing Officer finds as follows:

16. The Petitioner desires in good faith to obtain restoration of his privilege to practice law. Since the denial of his First Petition, Petitioner has applied for and has successfully passed the Examination for Admission to the District of Columbia Bar. The District of Columbia is now awaiting the results of this hearing before determining if it will admit Petitioner in that jurisdiciton.

Petitioner has made efforts to take the Tennesseee Bar as well, but was not successful because of the Indiana suspension. Petitioner has been offered a positon with a Memphis, Tenneessee law firm once reinstated and intends to pursuse a somewhat limited practice in Indiana if reinstated.

17. There is no evidence that Pettitioner has attempted to practice law at any time since his suspension by the Indiana Supreme Court.

18. Petitioner has complied fully with the Order for Discipline. Petitioner has paid all costs associated with the suspension and first Petition for Reinstatement and has notified his clients of his supsension and has assisted them in obtaining new counsel.

19. Petitioner's conduct since the discipline was imposed has been exemplary and above reproach. Since the hearing on his First Petition, Petitioner has remained active with the Wellness Center and is currenlty serving as its Chair. He remains active with his church and is a member of the governing Board of Directors. He helps with fund raising and provides counseling and health related services to individuals.

20. Petitioner has not been arrested, charged or interviewed by any police officials since the discipline was imposed.

21. Petitioner's attitude towards the misconduct for which he was disciplined is one of genuine remorse. Petitioner testified at his Second Hearing as follows:

> Yes, I am, and I still am, and I

deeply regret everything that I have caused, everything that I have done in this particular matter, and I assured the Commission previously, and continue to assure the Commission that it would never happen again. (Transcript p. 24) [[Linda Merritt) forced me to look at what I was doing, to see that was wrong, absolutely wrong, that I can not do that to an individual and still maintain the situation of being their attorney. That, I guess, was the hardest thing I had to realize, that if they participated, whether they participated because they wanted to, or trying to appease their attorney, so their attorney would do a good job. And that's bothered me from day one that anybody would think that, you know, I would try to force myself on somebody that way, because that is not my intention, never was my intention, and that brings it down to a point that I'm just totally sorry that ever happened

(Transcript at 35) There are no words that I can say to express my remorse for what I have done, but I think that the record that I have shown so far is one of movement towards the position of trust that I can again regain (Transcript at 105).

22. With regard to the showing required by Section 4(b)(6), the Supreme Court found in

Wells I that Petitioner had failed to convince the Court that he had a proper understanding of and attitude towards the standards that are imposed upon members of the Bar and that he will conduct himself in conformity with such standards. Although this Hearing Officer ultimately concludes that Petitioner will conduct himself in conformity with the standards imposed upon members of the bar, the Petitioner's attitude regarding the proceedings in general caused some concern Petitioner is a former judge who was appointed on several occasions as a hearing officer in disciplinary matters. His familiarity with the disciplinary process is far greater than the average attorney. Despite this familiarity, Petitioner at times was somewhat critical of the process, repeatedly attempting to streamline the process for his own benefit. Whether this was a result of his anxiousness to resume his practice as all attorney or just overzealoness on his part, this Hearing Officer found his attempts to present himself as a victim, somewhat offensive.

On balance however, the professional witnesses who testified on Petitioner's behalf all were of the opinion that Petitioner will not repeat the offense for which he was suspended. The are uniform in their opinion that Petitioner has a true understanding that what he did was wrong and that he is not likely to repeat the offense.

23. Petitioner was evaluated on May 22,1996 by Dr. John 0. Ehrmann, Jr., a

clinical psychologist upon the request of the Disciplinary Commission. Dr. Ehrmann found him to be or little risk of future misconduct and found that many of the problems which had beset him has been solved long ago and saw no reason why he should not be readmitted to the practice of law,

24. Dr. Ehrmann specifically stated in his report:

> In my extensive experience, there are very few in Mr Wells' position who have invested the degree of effort and energy in addressing their problems and maintaining ongoing professional support. In addition, Mr. Wells has involved himself in a voluntary position in an effort to help others with problems. He has earned the respect of therapists and his pastor as well. These individuals appear to have been in a position to assess Mr. Wells' progress both professionally and from a community standpoint. He is clearly endorsed very positively by these individuals. . . . I do believe that Mr. Wells has every ability to return to the practice of law and that he poses little, if any, risk for reoffense. Psychologically, he has accomplished in my opinion, the necessary steps to result in attitude change and self acceptance. Some of the underlying dynamics which contributed to his earlier difficulties have long since been faced and dealt with. (Pet. 11).

23. Although Dr. Ehrmann originally suggested that there be two contingencies placed upon the Petitioner should the Commission elect to recommend reinstatement, both of which related to the monitoring of Petitioner's professional and mental health status, in a later report Dr. Ehrmann explained as follows:

> [[It has been my observation that most professional advisory boards take very conservative and cautious stands regarding the reinstatement of practice privileges which have previously been revoked. I am therefore responding to my observation by offering a very careful, conservative set of recommendation. It is not my belief that such procedures are in any way essential to ensure public safety or protection in your particular case. (Exh. 18).

26. In addition, the transcript of Linda Merritt was admitted as evidence. She had previously testified at the hearing on the First Petition with regard to the movements Petitioner made over the course of his treatment with her. It was Merritt's view that in the initial sessions of their counseling, Petitioner did not fully appreciate the rationale used by the Court which led to his suspension. She testified that he was focused on the legal issue the opinion defined and

that she recognized the ethical and moral issues needed further discussion with him. It was her perception that he did not recognize the relative position of the authority figure a lawyer represents to clients. In the course of Petitioner's counseling, there were discussions about recognizing his position of authority After approximately four months in therapy at the end of February, 1994, Petitioner came to Merritt very distraught. He was having what she termed a "emotional crisis," characterized by lack of sleep, crying and feeling unworthy Throughout lie was very remorse about his behavior, his credibility, his suspension from the bar and about how people who were supportive of him becoming a lawyer may view him, since he "let them down." She indicated that such an event is anticipated in therapy when a person is experiencing a dramatic change in their belief system. In the past, Petitioner had believed himself to be on an equal footing with these individuals and did not consider his authority by virtue of his status as their lawyer. When she confronted him, he had to confront that belief and change it.

It is Merritt's professional opinion that, with respect to the specific issue that led to his suspension, he is aware of the standards that are imposed on members of the bar and will conduct himself in conformity in the future. (Merritt transcript, pps. 22-24).

27. Gerald D. Waggoner, a Memphis, Tennessee attorney who is the immediate

supervisor for Petitioner, stated that he concludes as a result of his observations of Petitioner that petitioner has an appropriate understanding of the standards imposed on lawyers and that he would conform with those standards in the future.

28. Clyde Keenan, a Memphis, Tennessee attorney and member of the City's Police Department for some 19 years testified by affidavit that based on his personal observations of Petitioner over a one year period and his discussions of the events leading to the suspension. Petitioner understands the standards imposed on lawyers and that he would conform to those standards in the future.

29. Similar opinions were expressed by Rev. Charles Edward Hamett, an assistant pastor at the church attended by Petitioner, Janet Watson, M.S., a counselor for the Wellness Center and the Rev. Tim Meadows, pastor of the church attended by Petitioner.

30. Petitioner can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and an officer of the courts.

31. Petitioner has kept up with the law in several different ways. Petitioner took and passed the bar examination for the District of Columbia in July of 1995. Admission is being

held in abeyance until the results of this Petition are made known.

32. Petitioner has reviewed the reported cases since the First Hearing. His hand-written notes contained in 12 folders were admitted into evidence. Petitioner followed the same procedure in preparation for this hearing on the First Petition. In addition , Petitioner has reviewed the ethics cases handed down by the Indiana Supreme Court over the last two years.

33. Since his suspension, Petitioner has periodically worked as a law clerk/paralegal for Joseph Smith, an Indianapolis attorney. In the past few years he has drafted at Mr Smith's direction and under his supervision, motions for summary' judgment, other pleadings, petitions for post-conviction relief and legal research. The legal research was conducted at the library of the Law School for the University of Memphis, as well as the Indiana University-Indianapolis Law School Library

34. Petitioner has also attended six seminars since his suspension. Most of them were related to the work that he was doing for Rush (now Park) Furniture.

35. Petitioner's suspension was not imposed by reason of physical or mental illness or infirmity.

Petitioner took the MPRE on March 11, 1994, after the term of his suspension had elapsed. Petitioner passed the MPRE with a scaled score of 95.

The Hearing Officer simply concludes as a matter of law that Petitioner has met his burden of establishing the following:

A. The Petitioner desires in good faith to obtain restoration of his privilege to practice law;

B. The Petitioner has not practiced law in this state or attempted to do so since his resignation from the bar.

C. The Petitioner has complied fully with the terms of the Order for Discipline;

D. The Petitioner's attitude toward the misconduct for which he was disciplined is one of genuine remorse;

E. The Petitioner's conduct since the discipline was imposed has been exemplary and above reproach;

F. The Petitioner has a proper understanding of and attitude toward the standards that are imposed upon members of the bar and will conduct himself in confomity with such standards; and

G. The Petitioner can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and an officer of the courts.

IT IS, THEREFORE, the conclusion and recommendation of this Hearing Officer that the Petition of Byron C. Wells should be granted and that Byron C. Wells' privilege to

Dated this 4th day of October, 1996.

/S/JULIA BLACKWELL GELINAS

IN THE SUPREME COURT

OF INDIANA

IN RE THE REINSTATEMENT OF:

BYRON C. WELLS Cause. 73SO-8904 -DI- 312

STATEMENT OF THE CASE AND ISSUES

Comes now Byron C. Wells, pro Se, your Petitioner, and would respectfully file this statement of the Case and Issues, in an effort to accelerate this Hearing. Your Petitioner would further say that he is making this statement under penalty of perjury and also would testify in the second hearing about reasons why the Count should not fear that the same acts would be repeated. To help the Hearing Officer understand the course of this case he would say as follows:

1. That on or about December 12, 1990, by order without stating the length of time, your Petitioner was suspended by the Indiana Supreme Court. In June, 1991, the Court stated the suspension was for three years for violations of disciplinary rules. The suspension period has been completed, and your Petitioner filed a petition for Reinstatement, which was approved by the commission but rejected by the Court. This is the second Petitioner for Reinstatement

These disciplinary charges stemmed from the fact that your Petitioner inappropriately

touched several young males over the age of consent in a sexual manner, resulting in him being charged with five counts of battery. Your Petitioner did not appeal or dispute the fact that the Court appropriately found he had committed battery, even though the criminal cases were dismissed by a pre-trial diversion. The court determined that there was a lawyer-client relationship. Your Petitioner's disciplinary hearing had been completed about a year earlier, with the Honorable Richard Payne as the Hearing Officer and Judge. He made a one-year suspension recommendation based upon counseling, but that was rejected by the Court, with three years imposed in its stead.

2. Shortly prior to the December 1990 suspension, your Petitioner was charged with two additional counts of battery for allegedly touching two other males also over the age of consent. One was a then-current client, and the other had been a client several years previously in a school problem. This arrest followed the first set of disciplinary charges, but prior to the suspension by the Court. Your Petitioner was found NOT GUILTY by a jury of six men on July 3, 1991. The disciplinary commission did not file any proceedings based upon these allegations. Information about the second set of charges was introduced during the hearing on the first reinstatement petition, but counsel for the commission objected when your Petitioner

started asking questions about those charges. The objection was sustained by the Hearing Officer since those charges were not a pending charge, or part of the underlying disciplinary action then under consideration.

3. The Indiana Supreme Court rejected the first reinstatement petition in an order dated September 29, 1994, saying that the Court was not convinced that your Petitioner would not repeat his inappropriate actions in the future. Specifically, the Court said:

> "This Count finds the record before us fails to convince us that Petitioner has a proper understanding of and attitude towards the standards that are imposed upon members of the bar and that he will conduct himself in conformity with such standards.

4. Your Petitioner filed an application for Rehearing, complaining, inter alia, that the hearing Officer had determined that your Petitioner had proved, by clear and convincing evidence, his understanding and probable future adherence to the rules. The Court, in issuing its final denial on or about November 21, 1994, granted review and said:

> "This Court further finds that, although not noted in the Chronological Case Summary of this matter maintained by the Clerk of

> this Court, ***ALL TRANSCRIPTS*** (emphasis added), and exhibits generated during hearing of this matter were transmitted to this court prior to its resolution of the respondent's petition for Reinstatement. ***This Court had the full benefit of such documents during its consideration*** (Emphasis added), Accordingly, and based upon further review of all matters presented, this Court now reaffirms its September 29, 1994 Order.

5. Your Petitioner, Pro Se, filed several motions, one of which disclosed that the transcripts of the four individuals- (all except the Petitioner) who testified in his behalf including the counselor he had seen for more than two years, and the associate pastor of his church, were not transcribed much less submitted to the Court for its consideration. Your Petitioner contends that the testimony of the counselor and pastor-witness went directly to the issue of his being able to conform to the ethical rules as to his future conduct. The full effect of their combined testimony was not ever seen by the Court, nor anyone else other than the Hearing Officer. The motions were summarily ignored and dismissed without comment.

6. Although small snips of testimony were submitted to the Court through the Commission's recommendation, there were

several factual errors and conclusions stated that could have drawn more than one conclusion The full testimony of those two witnesses would have gone a long way to solve any such questions, but the Court in its de novo review did not allow the record to be revamped to show what actual testimony was presented.

7. Your Petitioner believes that the Court must have determined that the honesty and frankness which your Petitioner showed during his explanation of the metamorphosis from an overreaching individual to one who respects the rights of others offended its senses and caused it to fear the repeated action. Those items could have resulted from:

(A) Statements that your Petitioner, in fact, had consensual homosexual sex with at least two of the complaining witnesses who were, or had been, clients

(B) Statements that your Petitioner had used sex to relieve himself of stress.

(C) The second set of charges.

During this second petition for reinstatement, your Petitioner would attempt to show this Hearing Officer:

Personal Attitudes of the Petitioner as to Rules and Sexual Conduct

1. Your Petitioner had earlier stated that he had a complete reversal of his own personal beliefs as to this type of behavior. He stated that the act would have been completely legal if it was consensual, but that he had come to realize that it would be

inappropriate to even ask another person to participate in such acts.

2. Whether approved by the individual members of this Court, or not, Indiana has decriminalized same-gender sex with some notable exceptions which are not relevant to this hearing. (They are acts in public and with minors). Your Petitioner has always contended, in a legalistic point of view, that if he had only asked a client to have sex rather than what he assumed was a subtle attempt by touching, then he would never have been in trouble with the disciplinary board and this Court. He stated previously that he has rejected that contention, and now understands that although what may be legally permissible, may still be a moral violation and against the rules of this Court. This contention was stated in the first hearing.

3. There are other reasons why your Petitioner can state flatly, and without any hesitation that he would not repeat the inappropriate acts. They are:

(A) Your Petitioner has now improved his own self-esteem and no longer has to seek others to bolster himself. Previously, your Petitioner admittedly did not like himself for several reasons, and sought physical comfort from others to combat that lack of self esteem. During the years of counseling, your Petitioner has not only determined that his self esteem was low, but why, in addition to how to increase one's self esteem. Lie has now

increased his own self esteem to that point where he can face society on his own two feet and be judged for his own actions, but also know that the actions were appropriate The transformation has been painful, but positive.

(B) Your Petitioner has also learned, from the counseling and other sources, that his was a classic case of an individual asking for help because of the conflicting messages that he was giving and receiving. First, the church and society was telling him that his own sexuality was inappropriate, wrong and sinful even if he did not participate. Second, his own self was telling him that he was not being true to his own self. The repressions brought on depressions, which lead to seeking comfort from wherever he could receive it. That conflict has been settled in your Petitioner's mind and soul.

C. Your Petitioner would also testify that he may not have changed on the outside, but his inner workings are completely different now than five years ago. Bolstered by a higher self esteem, in fact your Petitioner now likes himself and feels that he is a valuable member of society, and a heightened understanding of how and why he did those acts places him in the position where he has corrected his behavior since he now knows what was Wrong, why it was wrong, and how to avoid similar events in the future.

(D) Also, as mentioned above, your Petitioner in the last several years has been

PUBLISHER'S NOTE:

THE FOLLOWING PAGE IS UNAVAILABLE FOR FILMING:

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along with discussions of oral sex. The same court had imposed a similar sentence upon an attorney who touched his receptionist, paralegal and an associate attorney in his firm. Your Petitioner does not feel that it would be appropriate to discuss the Indiana case of ***In Re McClain***, (1995) which is even more sordid than the acts involving your petitioner, but would note that there was no coverup in your Petitioner's case, and that he has admitted his full guilt and has accepted the total responsibility for his acts.

6. Your Petitioner believes that he has traveled a long, long and lonely road during the last seven years. In 1978, your Petitioner left a glamourous and exciting career as an reporter with numerous awards for a major newspaper and became the County Court Judge in Shelbyville, Ind. Although lacking legal and political experience, he gained acceptance and approval as someone who tried to be fair and help his community. During this period of time with automatic changes of judge available on both civil and criminal eases, there were few ever filed during his seven years on the bench.

7. After suffering a defeat at the polls when he attempted to switch courts against the will of his county party chairman, he became a sole practitioner. During the next six years he had between 2,500 and 3,000 clients. Naturally, that heavy case load caused his marriage to strain and resulted in

his spending more and more time at the office. It was during that time that your Petitioner started letting go of reality and rationalizing his unwarranted sexual approaches to his clients.

8. In time, the State Police started an investigation. A client in a well-know burglary case used his relationship with your Petitioner to obtain a better sentence. Although some witnesses said they were upset by your Petitioner's actions, no one filed a complaint with the police. The police started the investigation based upon the felon's claims and sought witnesses.

9 At no time during the investigation were any substantiated claims found that your Petitioner tried to force, intimidate, talk or coerce anyone to participate in such acts. Basically, the witnesses said Wells said and did nothing after the touch, and they finished their conference they left. No client ever said that their failure to participate resulted in a lack of representation by your client. In fact, at least two of the witnesses said they tried to hire your Petitioner at later times because he represented them in a legally professional manner, except for the unwarranted touches which were a violation of the professional relationship.

10. When your Petitioner first learned of the criminal investigation, he became distraught and was suicidal. He placed himself in a psychiatric ward at Methodist Hospital

for treatment, and started the long road to recovery. Your Petitioner has had problems with what was stated as the Authority Figure of an attorney, because he never felt he was such a person. He, through his own rationalization, felt he was more of a friend. He came, through counseling, to realize that lie was iii fact an authority because they were there for his services.

11. Your Petitioner has undergone years of counseling, through the church and with social workers and has put his life in perspective. He now knows be had an orientation that is not the same as the general population. Ironically, the public disclosure also provided the platform for him to admit to his orientation, something he has never done before. Being exposed to the public, resulted in his no longer having that fear over his head. It also forced him to take e a look at himself and his actions.

12. Your Petitioner has learned, in no uncertain terms, that there are acceptable actions that protect society as a whole. The first, is to keep your hands to yourself In the past, your Petitioner tired to keep his activities as secret as possible. This produced sexual tensions, which he had repressed to the point that lie began to act out inappropriately. The repressions have now been exposed to the world, and he has no reason to try to hide, and is able to keep them under control. Further, in your

Petitioner's own mind, he has determined that monogamy is the best thing to be practiced. It is the fabric that has held this country together for years.

THEREFORE, for all the above reasons your Petitioner has stated, and will so comply in the future, with the statement that he is certain that his prior violations of the ethical considerations of this Court will not happen again. He has made significant discoveries and affirmations about himself and would urge the court to realize that for him to understand and heal his own mind, would prevent such acts in the future, he had to understand him self first. He now has admitted his problem, and has corrected it. It is only when one admits that there is a problem in the first pace will that person be able to change his behavior. That is what this Petitioner did, and will do.

(B) Sex to Relieve Stress

1. Your Petitioner did not fully explain himself during the first reinstatement hearing as to the understanding of using sex as a relief for stress. He did not mean to imply that every time be got 'stressed' he would seek to have sex with someone. Specifically, upon questioning by the counsel for the Commission, your Petitioner was asked:

> Q. Ms. Merritt referred quite frequently to the fact that stress played a factor in this (the sexual approach).

A Yes, she did.

Q. In your own words, I want to know how pressure played a part.

A. Okay. I was working from 8:00 a.m. to one, two o'clock in the morning every morning. The first year of my private practice I think I had 41 days off for the entire year including my vacation. I worked every holiday except a few. The, the clients ---I had a problem with telling a person I wouldn't represent them I just took in more cases than I could handle, and I got to the point of a burnout. I was having a very hard time at home, And I found it a lot easier to stay at the office. And when I was at the office, I rationalized my actions and I made approaches on these individuals.

Q. How does that stress in your personal life translate into these inappropriate passes at these young men.

A. Release of tension. You know, its something to get away from every Thing. To me, sex has always been an enjoyable event that made me feel better, and I would make the pass.

Q. Can you offer any instances where you've demonstrated since your suspension, an instance of the kind of maturity and resolve that's going to be required of you if you're readmitted, that you can handle the kind of powerful position that an attorney is placed in when he deals with clients?

A. That was the main contention of Miss Merritt's testimony, was that I was not aware in my own mind the power figure. Her counseling has brought that awareness to me.

As far as being in a law-related area, I haven't been because I can't practice law. Except I have been in positions where - as a representative in Chapter 13 and 7 hearings, I was able to talk to people. It's very difficult without being in a situation to say, you know, This has happened. I can tell you that I have been around young people and older people as well and no inappropriate activities has happened, even in close situations.(See Wells testimony in first hearing, Pp. 93 L. 19 to 95 L.20).

The statements were not meant to imply that your Petitioner would approach a sexual activities merely to relieve the effects of stress. Stress is one of the main affecting attorneys on a daily basis. There are other, appropriate ways, to relieve one's The ways your Petitioner now uses to handle stress include Church activities, outings, visiting with friends, taking a vacation, taking days off and not working the 10 long hours in a situation which would lead to one taking advantage of another person.

4. Your Petitioner has undergone some very stressful times during the past five

years of his three-year suspension and has not fallen into the same type pattern that lead to the previous inappropriate behavior, and can assure this honorable Court that such unwanted activities will never be used again.

5. In addition, if required, your Petitioner will continue in counseling to assure the Court and the Commission of his adherence to the roles, and cooperate in any way by providing whatever information is needed.

THEREFORE, for all the above reasons, your Petitioner believes that he has again proven to this Court that he has developed ways to appropriately deal with stress in his life, rather than allow the same situation to happen again in the future.

(c) The Second Set of Charges

I. Your Petitioner was never given an opportunity to explain to the Commission or The Court the facts behind We second set of charges. They involved two men who were working at your Petitioner's farm doing remodeling. One even claimed he put a knife to the hand of your Petitioner, and the other, a Golden Gloves Champion Boxer, could have easily handled the situation. Your Petitioner explained to the police that he was the subject of an extortion attempt by the two individuals, but the earlier rulings by the Hearing Officer prevented that information from being introduced in the first hearing.

2. Your Petitioner has already tendered

to the Hearing Officer two documents which would show that the alleged victims had ulterior motives in making the charges. One witness was in poor health, and may already have deceased, while the second witness is willing to testify if called. They both testified in the criminal jury trial, and were subjected to cross examination by the State. Their testimony would be admissible.

3. The jury determined that the claims of the two alleged victims were not supported by sufficient evidence, and their stories were contradictory in nature,

4. Your Petitioner has denied, and continues to deny that the events occurred as described in the official police reports, and would note that on one, the police were going to arrest the witness for a false crime report.

THEREFORE, for all of the above reasons, your Petitioner would request the Hearing Officer and Judge to consider the matters contained herein, and in the filed reports, as to what happened in the second set of charge.

CONCLUSION

Your Petitioner, Byron C. Wells, pro se, moves that the Hearing Officer and Judge consider the status of the case, and the issues herein, in an effort to shorten the length of time involved in disposing of this matter, and for all other relief proper in the premises.

Respectfully submitted,

/S/ BYRON C. WELLS, PRO SE

I affirm under penalty of perjury that the above representations are true and complete to the best of my knowledge and belief, and that the information which is contained as potential testimony is also true and complete to the best of my knowledge and belief.

/S/ BYRON C. WELLS, Petitioner

IN THE
SUPREME COURT OF INDIANA

IN THE MATTER OF)
)
BYRON C. WELLS)
CAUSE No. 73S00 8904-DI-312

BRIEF IN SUPPORT OF PETITION FOR REVIEW - PART ONE

Comes now Byron C. Wells, Reinstatement Petitioner, by counsel and in person, and timely moves this Honorable Court for a Review of the Report issued in this matter by the Hearing Officer on or about October 11, 1996 in two parts. This first part of the Petition concerns a comment by the hearing officer, while the second part of the Petition for review, which is separate, covers the Findings of Fact and Conclusions of Law.

This Review is to explain how Byron Wells used authorized and common pre-trial procedures in an effort to narrow the issues, expedite process, and promote judicial economy.

Your Petitioner would further explain that although he said the rules governing reinstatement do not cover a situation where a candidate is recommended to be

reinstated but rejected by the Court it was not uttered in a derogatory manner, nor meant to be. Further, he did not ever intend to imply that he was a victim in the disciplinary action and steadfastly admitted and stated he and he alone caused the problems which resulted in his suspension.

Petitioner Byron Wells, would say as follows:

1. The Hearing Officer Julia Blackwell Gelinas filed her Findings of Facts and Conlusions of Law with the Disciplinary Commission of the Indiana Supreme Court on or about October 4, 1996, which approved them and they are now believed filed with this Honorable Court. Eight members joined her in recommending reinstatement. Five members also did the same in 1994. No commissioner in either petition opposed reinstatement.

2. That Hearing Officer Gelinas included in the report the following language:

> 22. With regard to the showing required by Section 4(b)(6), the Supreme Court found in Wells I that Petitioner had failed to convince the Court that he had a proper understanding of and attitude towards the standards

that are imposed upon members of the bar and that he will conduct himself in conformity with such standards. Although this Hearing Officer ultimately concludes that Petitioner will conduct himself in conformity with the standards imposed upon members of the bar, the Petitioner's attitude regarding the proceedings in general caused some concern. The petitioner is a former judge who was appointed on several occasions as a hearing officer in disciplinary matters. His familiarity with the disciplinary process is far greater than the average attorney. Despite this familiarity, Petitioner at times was somewhat critical of the process repeatedly attempting to streamline the process for his own benefit. Whether this was a result of his anxiousness to resume his practice as an attorney or just overzealousness on his part, this Hearing Officer found his attempts to present himself as a victim, somewhat offensive. (Finding of Fact, Conclusions of Law and Recommendations. P. 5)

3. Your Petitioner fears that the Court, in its de novo review of the

AFTER 32 & BEFORE 33, OMITTED C

record, may mistakenly believe the above quote that Byron Wells was attempting to do something dishonest or improper in filing four pleadings and a Statement of the Case with the Hearing Officer. This is heightened because it is in the section on the Petitioners attitude.

4. Although Petitioner Byron Wells is filing this Petition for Review, Part One, to dispel any misconception of the pre-trial procedures, Petitioner Byron Wells is reluctant to do so simply because it may be construed as derogatory to the process. No such intent is meant by this action. However, the Court could consider the Petitioner's attitude towards the Hearing Officer in its deliberations and that could have an adverse effect on reinstatement. *In Re Sekerez*, (Ind. 1984) 458 N.E.2d 229, at 232, the Court instructs that the findings of the Hearing Officer are a sufficient basis for the imposition of discipline and that it is incumbent on the petitioning party to present a sufficient record to contravene the significance of the Hearing Officers findings. If the record is insufficient, the petitioning party must stand on it..."

5. Byron Wells was straight forward and candid when he filed the motions. Wells stated they were intended to prevent duplication of investigations and

accelerate the hearing along with the Statement of the Case to explain how the case came to be where it was. Filemarked copies of the motions and the letters of transmittal are attached as exhibits to this Petition, along with a copy of the Pretrial order.

6. These motions were filed before a pretrial conference was ordered. Byron Wells suggested the Hearing Officer may want to hold a pre-trial conference. Nowhere does it show these documents are critical of the courts, its hearing officers, or the procedures.

7. A fair reading of the pleadings show that one specifically says no derogatory intent is intended, and that the effort is being made to shorten the one year wait for a rehearing petition. They do show an effort to streamline the process in bringing this matter to a hearing because most of the groundwork had been covered in the first hearing.

8. Three motions were withdrawn after an objection by the Commission's counsel, and one motion was actually granted to give the parties the knowledge of what was submitted to the Court for a record. Byron Wells did not file any additional pleadings, nor have any further contact with the Hearing Officer until the trial on the petition. After that

hearing, the only item sent to the Hearing Officer was proposed findings as requested.

9. The transcript of the hearing may have been submitted to this Court. If not, it is being transmitted with the Petition for Review, Part Two.

10. Admission and Discipline Rule 23, §14 (c) allows pretrials "for the purpose of obtaining admissions, narrowing the issues presented by the pleadings...and such other matters as may aid in the disposition of the action." Byron Wells did follow this rule.

11. In addition, the record nowhere reflects that Petitioner Byron Wells thought he was a victim in this case. The attitude of a disciplined attorney is paramount in reinstatement procedures, and he must prove that he has changed his prior attitude, *In re Gutman*, (Ind.1992) 599 N.E.2d 604. Petitioner Byron Wells always admitted that he was totally responsible for the underlying discipline. He admits in both hearings that his actions and conduct was inappropriate and his witnesses confirmed that fact. That testimony was given at:

Wells II Hearing, Wells testimony, at page 25; 33; 37-38; 46-47; 51-53; 74-75;84; 105 and 108.

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Wells II, Dr. Ehrmann, Commission expert who evaluated Byron Wells, at p. 2.

Wells I Hearing, Wells testimony, at page 27; 81, 83 and 93.

Wells I Hearing, Linda Merritt, psychologist and Wells' counselor, at p. 25, and p. 32.

12. The Hearing Officer may have been referring to the fact that Byron Wells was frustrated because the Rules do not cover a situation wherein the Commission has unanimously recommended reinstatement and it is rejected by the Supreme Court. At no time did he mean to imply he was a victim, but perhaps may have indicated that he did not understand what he would be required to do next in the process since he is believed to be the first person to be in such a situation.

13. A review of dates shows all motions were filed prior to the pre-trial. During the hearing of Wells II the following exhibits were introduced that were connected in any manner with setting issues or streamlining process, or objections made:

> *Statement of Case* and Issues which was filed May 7, 1996. Adopted in lieu of opening statement. *No objection* by Commission.
> Admitted as argument, p. 5.
> *Exhibit 1.* P r e v i o u s

AFTER 32 & BEFORE 33, OMITTED G

Findings by Judge Colvin. *No Objection* by Commission. Admitted p.8.

Exhibit 2. Wells testimony in Wells I. *No objection* by commission. Admitted p. 9.

Objection to question propounded by Wells attorney as to what previous Findings found: Q. Did the previous finding show that others found you to be remorseful? *Objection*, previous findings irrelevant. Sustained, (Tr. p. 21).

Exhibit 9. Report of case law on reinstatement procedures as an assist to hearing officer. *Objection* on relevancy. Suggested it should be a posthearing brief. Sustained. p. 17.

Exhibit 9. Linda Merritt previous testimony from Wells I. *No objection* by commission. Admitted p. 41.

Exhibit 10. Excepts from Merritt testimony in Wells I to assist Hearing Officer so that she would not have to read entire testimony unless she wished. *Objection* by Commission as to show opinion of Wells. Sustained, p. 42.

Objection to question in effort by Petitioner's attorney for Wells to summarize doctor's report. Offer to prove. Sustained. (Had no relevancy to streamlining case).

In all, there were a total of

25 exhibits offered, of which 23 were admitted. One was an effort to highlight prior testimony which was rejected. The other was a legal report on reinstatement procedures . Only one objection was made to trial testimony. It also did not go to streamlining the hearing process.

13. Admission and Discipline Rule 23, §18 requires the Commission to make a recommendation to continue the suspension or reinstate under such terms and conditions as the Court deems proper. The petitioner may ask for review of an unfavorable recommendation but none would be expected to appeal a favorable recommendation. The rule does not even discuss submission of the Hearing Officer's Findings of Fact and Conclusions of Law, and what constitutes the record. This put Petitioner Byron Wells in a first impression situation, and he did not know which way to proceed.

14. Byron Wells would admit that he is anxious to resume the practice of law, and the efforts he made to simplify the issues may have been overzealousness on his part because of the duplication costs of reinstatement procedures, and that the District of Columbia is holding action on his request for admission in that

AFTER 32 & BEFORE 33, OMITTED I

jurisdiction until the Indiana case is decided. The motions indicate that they were an effort to duplication of investigation, and expidete the hearing.

15. In addition, Petitioner Byron Wells has never participated in a reinstatement hearing previous to these two hearings, and had no preconceived notions of how they operated. The only guidance he had is from the Rules.

THEREFORE, for all the above reasons, Petitioner Byron Wells requests that this Court grant a review of the Hearing Officer's report, accept an apology for any indiscretions which may have been shown by Petitioner Byron Wells, and determine that he has met his burden of proof on the ultimate issue of his fitness for reinstatement because he has shown a proper understanding of the standards imposed upon attorneys and the record shows that he will comply with such standards in the future.

Respectfully submitted,

/s/JOSEPH STORK SMITH,
Attorney for Petitioner
Byron C. Wells

AFTER 32 & BEFORE 33, OMITTED J

IN THE

SUPREME COURT OF INDIANA

IN THE MATTER OF)

BYRON C. WELLS)

Case No. 73S00-8904-DI-312

ORDER DENYING PETITION FOR REINSTATEMENT

The Indiana Supreme Court Disciplinary Commission has filed its recommendation upon the Petition for Reinstatement filed by the petitioner, Byron C. Wells, and therein recommends that the petitioner be reinstated to the practice of law. The petition is now before this Court for final resolution.

This Court suspended the respondent from the practice of law for a period of not less than three years based on the petitioner's intentional and inappropriate touching of young adults, some of whom were his clients, thereby attempting to initiate sexual activity with them. ***In re Wells***, 572 N.E.2d 1290 (Ind. 1991). Specifically, this Court found that the petitioner's conduct violated Ind. Professional Conduct Rules 8.4(b) and 8.4(d). Wells at 1293. The respondent's present Petition for Reinstatement was heard by a

hearing officer appointed pursuant to Indiana Admission and Discipline Rule 23, Section 18.

The Commission based its recommendation on her Findings of Fact, Conclusions of Law and recommendation Upon the Petition for Reinstatement Filed by Byron C. Wells. Additionally, this Court has before it the petitioner's Petition for Review of the hearing officer's report and documents filed during hearing of this matter.

Our review of the findings of the hearing officer and recommendation of the Disciplinary Commission upon a petition for reinstatement is de novo, and we examine all matters presented. ***In re Gutman***, 599 N. E. 2d 604, 606 (Ind. 1992). Although we will accord the hearing officer's Findings appropriate emphasis, we reserve the right to reach the ultimate determination. Id.

The hearing officer found that the petitioner has established by clear and convincing evidence the prerequisite requirements for reinstatement, pursuant to Ind. Admission and Discipline Rule 23(4) b)***FN1*** However, she noted that the petitioner's attitude regarding the [(reinstatement) proceedings in general caused her some concern," and she found his attempts to present himself as a victim [(of the disciplinary process] somewhat offensive."

FN1 Those requirements are that (1) the

petitioner desires in good faith to obtain restoration of his privilege to practice law; (2) the petitioner has not practiced law in this state or attempted to do so since he or she was disciplined; (3) the petitioner has complied fully with the terms of the order for discipline; (4) the petitioner's attitude towards the misconduct for which he or she was disciplined is one of genuine remorse; (5) the petitioner's conduct since the discipline was imposed has been exemplary and above reproach; (6) the petitioner has a proper understanding of and attitude towards the standards that are imposed upon members of the bar and will conduct himself or herself in conformity with such standards; (7) the petitioner can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and officer of the Courts; (8) the disability has been removed, if the discipline was imposed by reason of physical or mental illness or infirmity, or for use of or addiction to intoxicants or drugs; and (9) the petitioner has taken and passed the Multistate Professional Responsibility Examination (MPRE) with a scaled score of eighty (80).

Findings of Fact, Conclusions of Law and Recommendation Upon the Petition for Reinstatement filed by Byron C. Wells at 5. The Hearing officer tempered those conclusions by findings also that the evidence indicated that the petitioner possessed an understanding of the wrongfulness of his actions and that he was not likely" to repeat the offenses which led to his suspension. findings at 6.

We share the hearing officer's concerns regarding the petitioner's conduct during the hearing stage of these proceedings because it implicates his attitude towards the standards imposed upon members of the bar and his current capacity to conduct himself in conformity with such standards, as required by Admis. Disc. R. 23(4)(b)(6) Both the petitioner's pleadings and presentation at hearing are permeated by suggestion that he has been wronged by the disciplinary process of this state and that his misconduct did not warrant a sanction as severe as a three-year period of suspension with the additional burden of convincing this Court of his fitness for readmission at the conclusion of that period.

We disagree. The misconduct leading to the petitioner's suspension was grave. He used his

advantage, power and control to attempt to inappropriately incite sexual relations with

young men, some of whom had come to the respondent to seek his professional assistance. We have stated that the more serious the attorney misconduct, the greater its negative impact on future rehabilitation and eventual reinstatement and, accordingly, the greater the petitioner's burden of proof to overcome the implication of unfitness which is conjured by the misconduct. ***Gutman*** at 608. In the present case, our concerns about the sincerity of the petitioner's remorse and the integrity of his attitude towards and understanding of the standards imposed upon members of the bar, coupled with the severity of his misconduct, outweigh the evidence he presented concerning his rehabilitation and present fitness to practice law. Accordingly, we find that he should not be readmitted to the practice of law

IT IS, THEREFORE, ORDERED that the petitioner's Petition for Reinstatement to the practice of law in this state is hereby denied. The Clerk of this Court is directed to forward notice of this Order to all parties to this proceeding or their attorneys.

DONE at Indianapolis, Indiana, this 18th day of December, 1996.

/s/ Randall T Shepard
Randall T.Shepard
Chief Justice of Indiana

All Justices concur

IN THE

SUPREME COURT OF lndiana

IN THE MATTER OF)

BYRON C. WELLS)

CAUSE No. 73500 8904 -DI- 312

PETITION FOR CONSIDERATION BY THE INDIANA SUPREME COURT OF PRIOR TESTIMONY THAT BYRON C. WELLS CREDITS THE DISCIPLINARY PROCESS AS "HAVING PROBABLY SAVED HIS LIFE" AND THAT HIS ATTITUDE TOWARDS THE MEMBERS OF THIS COURT AND THE DISCIPLINARY PROCESS HAS CHANGED FROM INITIAL RESENTMENT TO ONE ACKNOWLEDGING HIS WRONGDOINGS, SUBMISSION TO THE DISCIPLINE IMPOSED WITHOUT QUESTION AND ATTEMPTED FULL COMPLIANCE WITH THE REINSTATEMENT REQUIREMENTS AS OUTLINED BY THIS COURT WHICH HAS EXCLUSIVE CONTROL OVER ADMISSION AND DISCIPLINE OF ATTORNEYS

Comes now Byron C. Wells, who first being duly sworn, deposes and says:

Petitioner Wells has previously stated, no less than twice,(once in his pleadings and once in the latest hearing under oath) that his perceived attitude towards the

disciplinary process of this Court is credited with probably saving his life, Although the realization took some time to reach its current state because of his personal confusion, he nevertheless, honored the authority of the Court to issue the suspension for whatever period of time it felt necessary, and has attempted to fully comply with the court-imposed requirement of proof of rehabilitation for reinstatement.

There is no doubt in your Petitioner's mind that this Honorable Court has exclusive authority in the admission and discipline of attorneys and he has stated so in previous filings.

Although he may have presented legal arguments in motions between hearings that the Supreme Court rule does not specifically indicate that anything but the recommendation was to be submitted to the court, he did follow the previous Denial of Reinstatement in presenting his proof. Likewise, he did not expect mere legal arguments to considered as evidence against him in a future hearing.

The fact that this issue comes from the Indiana Supreme Court causes Petitioner's mistakes in communications even more devastating. Simply because of the importance of the Supreme Court, and its Hearing officer, words take on extra ordinary importance and one is fearful of misconceptions. In this case, your Petitioner took the Hearing Officer's comments as to imply that he somehow

had claimed to be a victim in the incident, not the complaining witnesses. This Court, however, inserted limiting qualifications for the statement that Wells' attitude towards the [[reinstatement], proceedings in general caused some concern and she found his attempts to present himself as a victim " [[of the disciplinary process]" somewhat offensive. Wells was merely talking about his personal situation and the fact that the rules did not give him guidance as to what action he should follow in order to be reinstated. It was a simple explanation of the past and current action within the case.

These problem areas, Wells contends, were efforts to explain the process which caused the second hearing to be needed. Neither the Hearing Officer nor the Indiana Supreme Court specifically pointed to any statements, evidence, exhibits or provide any indication to show such any acts which show an attitude towards the reinstatement process which was detrimental, but only a statement of the record. The Court concluded that there was a "suggestion" that wells was harmed by the disciplinary process and felt the three year sentence was `harsh."

Wells did not merely suggest the effects the disciplinary process had on him. He stated he would probably have been dead if this Court had not intervened. The statement was first made in 1994, and again in the 1997 hearing. It was more than a suggestion, but was a

statement of appreciation. One does not normally harbor ill will, bitterness, anger or resentment towards someone or some process which one HAS realized HAS lead him to change his improper and inappropriate ways and improve his chances of survival. Wells HAS done that and HAS stated as long ago as 1994 that he realized the effect of this Court's discipline was responsible because it brought him back to reality, made him examine his life, and improve his personal acts.

Likewise, Petitioner Wells would ask the Court to review a finding or suggestion that the suspension did not deserve to be three years and proving his fitness for readmission. Petitioner Wells would explain that to show his acts were not as horrific as some others he was attempting to show this Honorable Court that he recognizes the reasons why he was not immediately disbarred for his actions in the past, rather that the lesser sanction of a lengthy suspension. As stated in the Petition for Review of Judge Gelinas' findings, Wells said:

> Although Wells did not intimidate, threaten, use economic leverage of a fee or any other act including talking (which was one of the findings by the initial imposition of discipline) his touching was in fact a battery. The lack of any other act by Petitioner Wells may have been mitigating factor which

> prevented a total disbarment by this Court. He admits it was not then, or it is not now, an excuse of (sic) for his inappropriate action (Brief, Pg. 18)

The original order imposing discipline reads:

> The touching of these young males as described above occurred without their consent. These acts were not inadvertent and were the product of intentional conduct on the part of the Respondent. At no time did Respondent exert any force upon the victims not did he engage in any conversation with them in an effort to persuade them to participate with him in any further conduct. (See ***Wells***, 572 N.E.2d 1290.)

A review of the record in this reinstatement process will show that Petitioner Wells accepted the discipline imposed by this Court and did not attempt to obtain a law license elsewhere in contravention of the suspension from Indiana. He took no bar examinations, or attempted to practice law during the three years and the year following the first application for reinstatement. It was only after the period of suspension was completed and the reinstatement rejected that he sought another license. In fact, your petitioner was suspended "for three years without automatic reinstatement" rather than "for not less than three years.

Petitioner Wells explained in the first

hearing that although it was "felt" he had done nothing wrong at the time (of the initial inappropriate touchings) he had changed his attitude to realize his sordid attempts were improper, and that it would have been improper merely to ask rather than touch. Wells 1st Reinstatement Hearing Tr. Pg. 23 to 29) and again, (Wells 1st Reinstatement Hearing, Tr. Pg. 60 to 64) In the second hearing, Wells said even consensual contact with a client would be unethical.

The reasons why the petitioner also asked for a hearing rather than an agreement being worked out was also explained- -not to say the discipline was too harsh---but to show why a hearing was taken, This court has stated in nearly every agreed discipline case that it encourages the settlement of these cases and has made it known that the discipline imposed probably would be harsher had it gone to a hearing stage Your petitioner felt it necessary because of such statements by this Honorable Court to explain to the Court his mind frame, and the information he possessed which gave him reasons to seek a hearing rather than accept some agreement from the Disciplinary Commission. At one time, Wells was told the commission was going to drop all charges if the victims did not contact the commission, and no one was sure which witnesses would appear.

Following the rejection of the first petition efforts were made for review and it

appears this Honorable court considered those pleadings for its latest rejection as this is where the first mention of the written requirement of the rule as opposed to the operations of the Court. The review efforts were based upon incorrect assumptions because the order did not specify what this Honorable Court found lacking. The petition for review was filed by an attorney very knowledgeable in the disciplinary field. His petition was unsuccessful as well. One of the legal arguments was that the Court did not follow its own rules for reinstatement.

It was then that Petitioner wells filed, pro se, several motions brought on by his frustration at attempting to obtain his license and the inability to determine and correct why it was denied. That frustration coupled with the discovery that the Court did not review the transcripts of the witnesses as to remorse and rehabilitation further clouded the issues involved. Wells also claimed the rule did not require what the Supreme Court was now requiring. It is believed that those are the only two places this is discussed. It was not part of the record for the second hearing but part of the Court's ruling to deny reinstatement. Until the receipt of the second rejection, Wells was still under the mistaken impression that somehow this Honorable Court was telling him that he had not proved his rehabilitation. It is believed that also may have been one of the reasons for the

Commission asking him to have an evaluation by a clinical psychologist.

On December 18, 1994, Petitioner Wells filed a Petition for leave to Amend and Amplify Record or for Instructions on Future proceedings because the Denial of Reinstatement Being Manifestly Unjust and four other motions. It was there that Wells said, after stating he at first had resentment for the suspension (see page 6) but then he explained his current attitude (Page 8) saying:

> Now, instead of disdain for this court, Wells prays for guidance. That guidance is not that the Court see and agree with his arguments, but that he has the wisdom to convince this Court of his sincerity and future adherence to ethical rules. He hopes to do this with proper and appropriate appeals. Wells no longer has anger in his heart for this Court, even after the Court correctly determined he had an incorrect attitude and understandings of the standards applicable. In fact, in some ways, the imposition of discipline probably resulted in lessening his health problems that we en route for sometime, which saved his life. He has no doubt that if he continued in the stress of everyday life that was being placed on his daily then that he would not be a survivor this date, and the Petitioner would be moot.

Wells understands that the individual members of this Court are attempting to do what they believe to be proper for the public as they exercise the power and authority granted to them by (the) Indiana Constitution. Even if Wells is not successful in his efforts in this case, he would pray that this Court be guided by compassion, decency and fair play for all the others who may be engage in inappropriate behaviors and how have rehabilitated themselves.

An apology was given to the Court for the legal arguments presented stating he did not intend the remarks to be disrespectful, but were mere legal arguments. Although admittedly inartfully drawn Petitioner Wells discussed the issues involved, such as the requirements of the reinstatement rule, and what was required to be submitted to the Court for its consideration. To this date, Wells is not aware of what was actually placed in the hands of the Indiana Supreme Court and relied upon for its rejection of his reinstatement petitions. In addition, the petitions asked for instructions as h
ow to proceed since the rule is silent on the issue.

In the 1996 Reinstatement Hearing, Wells (Tr P. 60) testified:

> Yes I do. In fact, you know, I don't know where I'd be if it had not been for the discipline that was

imposed on me. I probably would have been dead---and not from the heart Attack I suffered---but from other reasons, because I was very, vary stupid.

Petitioner Wells filed a Statement of the Case and Issues on May 9, 1996 in an attempt to briefly explain the posture of the case to the newly appointed Hearing Officer. It was introduced as an opening statement for the actual hearing and was understood not to be evidence. The Hearing Officer attached it to her recommendations which included the claim that Wells had described himself as a victim.

Wells thought at the time that he was providing a factual basis to the hearing Officer for purposes of the 2d hearing. The procedure of the case is merely a restatement of the actual steps and rulings made previously. They are all part of the process of this ease. It did not contain, nor is there any evidence of any attempt, to berate this Honorable Court, or its individual members.

Any claim as to being a victim of the reinstatement process went to the fact that Petitioner Wells was unable to determine why his reinstatement was rejected due to the cryptic opinion of the Supreme Court, and a lack of instructions for him to follow to help insure compliance with the rules for reinstatement. The fact that he did not understand the reasons for rejection are

flatly shown by the pleadings and filings after the rejection He concentrated on the record and the rehabilitation.

Wells complained that he did not know what was in the record, nor did the rule state that the record was to be sent to the Court. Wells still believed the Court was concentrating on his rehabilitation by the 1994 rejection, so he presented that evidence during the second hearing. That was the reason for the discussion of evidence on the issue found at Tr. Pg. 68. Wells contends that his actions were not disrespectful comments made about the Court, or its individual members, but to the process which in reality allows:

1. Information and a record prepared by the Hearing Officer to be sent to the Court without anyone's knowledge of its content.

2. The Supreme Court rejecting the recommendation without explaining what was the problem, or what the petitioner has to do to comply with the requirements of the Court at a later date.

3. The failure of the Court to allow the petitioner to address whatever error or missing facts on which the Court bases its rejection due to a potential for the record to be misconstrued, some exhibit or evidence not being in the record or other problem that may be capable of being repaired. (Numerous other state supreme courts have a process whereby the Court issues an order to show cause why or why not the court should take the indicated

action. This procedures is not contemplated under the Indiana procedure.)

Therefore, under the Indiana rule, a petitioner such as Wells does not have a forum to seek a review of the rejection following a favorable recommendation. This is completely different when the commission issues a recommended rejection, such as in ***Gutman***, 599 N. E. 2d 604 (Ind. 1992) and others. The respondents there are on notice that the commission has determined certain facts unfavorably and they are given notice to take corrective action. The same is not true following unanimous favorable recommendations.

This entire process may be an exercise in a matter of miscommunication brought on by the frustration of the petitioner in his efforts to obtain his license. There was never any desire on the petitioner's part to cause additional discredit to the Court. His arguments were legal arguments one makes when attempting to obtain relief.

In addition, any comment which may be perceived about the harshness of a penalty should be tempered by the of tender admitting his wrong doings, taking affirmative action on his own to correct his behavior, and proving rehabilitation. ***In Re Gutman***, supra, at 608, the attorney refused to admit his wrongdoing but claimed poor judgment only and the Court said it indicated a lack of remorse.

Wells was emphatic when he stated his actions were improper and illegal. He did not

try to blame anyone else for his actions, only accepted the dishonor and disgrace he brought upon himself. Wells honored the three year suspension, and only after the time has been completed and the reinstatement process denied did he attempt to obtain a license in another jurisdiction. The three years of suspension has now grown to six, and Wells attempted to do more than most attorneys in satisfying the Court's requirements. He even reviewed attorney sexual misconduct throughout the nation to show this Court the current trend in that area of discipline.

THEREFORE, for all the above reasons your Petitioner Byron C. Wells prays that the court review its previous denial of reinstatement and grant the same.

Respectfully submitted,
/s/Byron C. Wells
Byron C. Wells Pro Se

IN THE
SUPREME COURT OF INDIANA

IN THE MATTER OF)

BYRON C. WELLS) Case No. 73S00-8904~DI-312

ORDER DENYING PETITION FOR REHEARING

On January 15, 1997, the petitioner, Byron C. Wells, filed a petition with this Court, therein requesting rehearing of his Petition for Reinstatement which was denied by this Court on December 18, 1996.

And this Court, being duly advised, now finds that the petitioner's request for rehearing should be denied.

IT IS, THEREFORE, ORDERED that the petitioner's request for rehearing of his Petition for Reinstatement is denied.

The Clerk of this Court is directed to forward notice of this Order to the petitioner or his attorney and to the Indiana Supreme Court Disciplinary Commission,

DONE at Indianapolis, Indiana, this 24th day of February, 1997.

/s/Randall T. Sheppard
Randall T. Shepard
Chief Justice of Indiana

All Justices concur.